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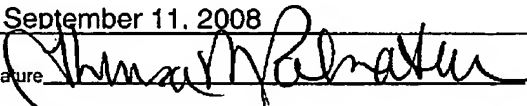
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)									
		60469-239; PA000.05146-US									
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>September 11, 2008</u> Signature <u></u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number <u>10/556,801</u>	Filed <u>11/14/2005</u>								
		First Named Inventor <u>Brian T. McNamara</u>									
		Art Unit <u>3654</u>	Examiner <u>Stefan Kruer</u>								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u>/David J. Gaskey/</u></td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>David J. Gaskey</u></td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u></td><td><u>248-988-8360</u></td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>September 11, 2008</u></td></tr></table>				<input type="checkbox"/> applicant/inventor.	<u>/David J. Gaskey/</u>	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>David J. Gaskey</u>	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u>	<u>248-988-8360</u>	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>September 11, 2008</u>
<input type="checkbox"/> applicant/inventor.	<u>/David J. Gaskey/</u>										
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>David J. Gaskey</u>										
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u>	<u>248-988-8360</u>										
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>September 11, 2008</u>										
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".											
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brian T. McNamara
Serial Number: 10/556,801
Filed: 11/14/2005
Group Art Unit: 3654
Examiner: Kruer, Stefan
Title: TIE-DOWN COMPENSATION FOR AN
ELEVATOR SYSTEM

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests pre-appeal brief review because there is no *prima facie* case of obviousness against any of Applicant's claims. Claim 1 is reproduced here for convenience.

1. An elevator system, comprising:
 - a cab;
 - a counterweight;
 - a load bearing member extending between the cab and the counterweight so that the cab and counterweight move simultaneously;
 - a tension member extending between the cab and the counterweight, the tension member providing a desired tension on the load bearing member;
 - a termination associated with an end of the tension member, the termination including an elastic element that dampens an initial tendency of the cab or the counterweight to continue moving even though the other of the cab or the counterweight has stopped; and
 - a damper supported for movement with one of the cab or the counterweight, the one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other of the cab or the counterweight has stopped after a bias of the elastic element is overcome and the elastic element is at least partially compressed.

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**The rejection of claim 6 under 35 U.S.C. §112
must be withdrawn.**

The rejection of claim 6 must be withdrawn. Claim 6 is part of the originally filed application. MPEP §2163(I)(A) indicates that claim 6 is therefore presumed supported by the original filing. Additionally, the specification on page 4 clearly describes an example belt having characteristics consistent with what is recited in claim 6. The drawings clearly show a plurality of belts. Moreover, line 13 says "six such belts" and the word "such" refers back to the belt described in line 9, for example. One skilled in the art clearly would understand that what is recited in claim 6 was disclosed in a manner consistent with the requirements of 35 U.S.C. §112, first paragraph. Additionally, no further details are required in the description or drawings to convey to the skilled artisan that which is recited in claim 6. The rejection must be withdrawn.

**The rejections based upon the *Fuller, et al.*
reference all must be withdrawn.**

There is no *prima facie* case of obviousness. The Examiner has attributed features to the *Fuller, et al.* reference that are not there. The Examiner contends that the *Fuller, et al.* reference teaches a "damper (56) supported for movement with one of the cab or the counterweight, one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other ... has stopped after a bias of the elastic element is overcome and the elastic element is at least partially compressed." There is no such "damper" in the *Fuller et al.* reference.

First, as the Examiner appears to acknowledge in the office action, the "damper (56)" is not associated with an end of a "tension member (16)" in the reference. Moreover, the active hitch assembly 36 includes active force actuators 56 that do not perform the function suggested by the Examiner. Column 7, lines 10-23 clearly indicate that when the brakes are applied to stop the elevator car, the hitch command signal is controlled "to thereby freeze the position of the force actuators 56 when the elevator car brakes are applied." In other words, the active force actuators 56 are locked in position when the elevator car brakes are applied and no damping occurs that could possibly correspond to that suggested by the Examiner. When the brakes are applied (i.e., the elevator car stops), the active force actuators 56 are frozen in a single position

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and do not operate as a "damper" that reduces motion after a bias of the elastic element is overcome.

Additionally, in the Advisory Action the Examiner states: "In accordance with the abstract of Fuller et al, said actuators comprise '...the variable extension... controlled for varying the vertical position of the elevator car *along the elevator flight path* for damping at least the high frequency components of elevator car vertical oscillations'." (emphasis added) This statement reinforces Applicants' point that the damper 56 of Fuller is applicable to an elevator cab in motion (*i.e.*, "along the flight path") as opposed to that which is recited in the claims, *i.e.* an elevator cab that has stopped (*e.g.*, "when the other of the cab or counterweight has stopped"). As *Fuller's* damper 56 fails to act as a damper when the elevator cab is stopped, Fuller fails to teach or suggest this limitation of claim 1.

Given the express teachings of the *Fuller, et al.* reference, it is impossible to interpret the reference as suggested by the Examiner and there is no possible *prima facie* case of obviousness against any of Applicants' claims. Even if the proposed combinations could be made, the result is nothing like what the Examiner contends. The rejections of claims 1-19 are all based upon the same flawed interpretation of the *Fuller et al.* reference and, therefore, every one of those rejections must be withdrawn.

Additionally, it is not possible to use the *Miyoshi* reference to somehow change how the *Fuller et al.* arrangement is described as working. First, that would change the principle of operation of the *Fuller et al.* reference. Such a modification cannot be made as explained in MPEP 2143.01(VI).

Second, the *Miyoshi* reference teaches an arrangement that operates in a manner that is the direct opposite of the claimed arrangement. Applicants' independent claims 1, 10 and 18 recite an arrangement including an elastic element of a termination and another damper associated with a tension member as claimed. In Applicants' claims, the bias of the elastic element is overcome first and the damper acts subsequent to that happening. In other words, the spring constant or elastic coefficient of the damper is *higher* than that of the termination elastic element. Such an arrangement is the opposite of what is disclosed in the *Miyoshi, et al.* reference.

On page 10, lines 11-15, the *Miyoshi, et al.* reference teaches that its elastic member between the counterweights is "composed of a member having an elastic coefficient *smaller* than

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those of the ropes and thimble rod spring to thereby increase the mode displacement difference between the first and second counterweights." The Examiner cannot interpret the *Miyoshi, et al.* reference in a way that would render it to be consistent with what the Examiner admits is missing from that which the Examiner contends is in the *Fuller et al.* reference. The *Miyoshi, et al.* reference teaches an arrangement that is the opposite of what is claimed. The *Miyoshi, et al.* reference cannot be modified in a way to make it perform in a manner that is the opposite of how it is intended to perform and then somehow be added to the *Fuller et al.* reference in an attempt to manufacture a *prima facie* case of obviousness. It is not possible to use the *Miyoshi* teachings to somehow attempt to justify a modification of the *Fuller et al.* reference that would somehow render it consistent with the claimed invention.

The rejections based upon the *Miyoshi, et al.* reference must be withdrawn

Applicant's claim 20 is reproduced here for convenience.

20. An elevator system, comprising:
a cab;
a counterweight;
a load bearing member extending between the cab and the counterweight so that the cab and counterweight move simultaneously;
a tension member extending between the cab and the counterweight, the tension member providing a desired tension on the load bearing member, the tension member comprising a plurality of belts each having a thickness of approximately 10 mm and a width of approximately 30 mm; and
a damper supported for movement with one of the cab or the counterweight, one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other of the cab or the counterweight has stopped.

The rejection of claims 20-23 is based on the proposed combination of the *Miyoshi, et al.* and *Baranda, et al.* references. There is no *prima facie* case of obviousness. The *Baranda, et al.* reference discloses a belt corresponding to the *load bearing member* of Applicants' claim 20. There is nothing in the *Miyoshi, et al.* or *Baranda, et al.* references that discloses or in any way suggests using a plurality of belts as the *tension member* recited in Applicants' claim 20. Therefore, even if the proposed combination could be made, there still is nothing in it that corresponds to the claimed tension member.

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Additionally, the sheave sizes mentioned in the *Baranda, et al.* reference are for traction sheaves used to direct the load bearing member. Those traction sheaves have nothing to do with a tension member as recited in Applicants' claims. Therefore, even if the proposed combination could be made, the result is not what the Examiner contends and there is no *prima facie* case of obviousness. There is nothing in either reference that in any way suggests using a tension member arrangement as recited in Applicants' claim 20.

Applicants respectfully submit that there is no *prima facie* case of obviousness against any of Applicant's claims and that a notice of allowance is in order.

Respectfully submitted,

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Dated: September 11, 2008

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